HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R. No.2688 of 2006
Date of decision : 15.12.2006.

Kamal Kumar (minor) **.....Petitioner**

versus

Balbir Singh and others **.....Respondents**

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.Brijender Kaushik, Advocate for the petitioner

Mr.Pritam Saini, Advocate for the respondents.

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JUDGMENT

HEMANT GUPTA, J.

For orders, see Civil Revision No.1822 of 2006.

(HEMANT GUPTA)
December 15, 2006 **JUDGE**
**mohinder*

The challenge in the present revision petition is to the order dated 25.4.2003, passed by the learned trial Court directing the plaintiff-petitioner to affix the ad-valorem Court fee and the order dated 6.2.2006, passed by the learned trial Court, whereby an application filed by the plaintiff to review the order dated 25.4.2003, was dismissed.

The plaintiff-petitioner has filed a suit for declaration that he is coparcener in the suit property and the sale dated 15.6.1997, effected by defendant No.3 in favour of defendant Nos.1 & 2 is null, void, ineffective and not binding on the rights of the plaintiff. It was alleged that the suit property is ancestral property which was earlier owned by Rikhi Ram, grand father of the petitioner and therefore, the petitioner being a coparcener has a right in the property by birth.

Learned counsel for the petitioner has referred to a judgment reported as ***"AIR-1973 S.C.-2384, Shamsher Singh versus Rajinder Prashad and others,*** to contend that in a case where the challenge is to the sale by a coparcener of a Joint Hindu Family property, the proper Court fee to be affixed is under Section 7 (iv) (c) of the Court Fees Act, 1870 (hereinafter referred to as the `Act') and that Section 7 (v) of the Act, as amended in Haryana by Act No.22 of 1974 provides for the Court fees in case of agricultural land and in respect of urban property. In terms of the aforesaid provisions, the Court fees is not to be affixed in terms of the sale consideration mentioned in the sale deed.

Learned counsel for the respondent relies upon ***"2004 (3) P.L.R.-513, Himanshu versus Smt.Kailash Rani and another"*** and Full Bench Judgment of this Court reported as ***"1981 P.L.J.-423,***

Niranjan Kaur versus Nirbigan Kaur", apart from the judgments reference of which has been made by the learned trial Court.

In Shamsher Singh's case (Supra), the Hon'ble Supreme Court has approved the Full Bench judgment in A.I.R.1941-Lahore-97 and A.I.R.1945-Lahore-13 and held that a decree against a father is a good decree against a son and unless the decree is set-aside, it would be executable against the son and it is essential for the son to ask for setting aside of the decree. The Hon'ble Supreme Court of India allowed the appeal holding that the plaintiff is liable to pay ad-valorem Court fee in such a suit under Section 7 (iv) (c) of the Act.

The Full Bench judgment of this Court reported as ***"1981 P.L.J.-423, Niranjan Kaur versus Nirbigan Kaur"***, relates to a suit for cancellation of document of sale of agricultural land on the ground of fraud and misrepresentation. It was held therein that the plaintiff cannot claim possession unless the sale deed is cancelled by a decree of the Court and as such, the suit does not fall within the provisions of Section 7 (iv) (c) of the Act and to such a suit, the only provision applicable is Article 1 Schedule-1 of the Act. It may be noticed that the said finding was returned on the basis of a common case of the parties that in case the main relief in the suit is held to be that of cancellation of the sale deed, then the case is not covered by Section 7 (iv) (c) of the Act and only provision applicable is Article 1, Schedule-1 of the Act. In order to bring the case under Section 7 (iv) (c) of the Act, the main and substantive relief should be that of a declaration and the consequential relief should be ancillary thereto. It is so held to the following effect:-

> "It is the common case of the parties that in case the main relief in the suit is held to be that of cancellation of

the sale deed, then the case is not covered by Section 7 (iv) (c) and the only provision applicable is Article 1, Schedule-1 of the Act. In order to bring the case under Section 7 (iv) (c) of the Act, the main and substantive relief should be that of a declaration and the consequential relief should be ancillary thereto. Moreover, if no consequential relief is claimed or could be claimed in the suit, then Section 7 (iv) (c) will not be attracted. Section 7 (iv) (c) clearly contemplates suit to obtain the declaratory decree or order where consequential relief is prayed. It further provides that in all such suits, the plaintiff shall state the amount at which he values the relief sought. A further proviso has been added thereto by the Punjab Act No.31 of 1953, which reads as follows:-

"Provided further that in suits coming under sub-clause (c), in case where the relief sought is with reference to any property such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of this section."

In a suit to obtain declaratory decree where no consequential relief is prayed, sub-clause (iii) of Article 17 of Schedule II of the Act, will be applicable, but the suit filed by the plaintiff-petitioner was virtually, to all intents and purposes, for the cancellation of the sale deed, executed by her, in favour of the defendant-respondent. She cannot claim possession unless the said deed is cancelled by a decree of the Court. To say in the plaint, that it be declared that the sale deed got executed from her as a result of the fraud, was void and not finding on her, does not convert the suit into one for a declaration with the consequential relief of possession so as to fall within the provisions of Section 7 (iv) (c) of the Act. To such a suit, the only article applicable Article 1, Schedule 1 of the Act, and for that proposition, further support can

be had from a Full Bench decision of the Allahabad High Court in Kalu Ram's case (supra) also wherein as regards the valuation of the relief as to the cancellation of the alternation, it has been held that such a relief falls neither under Section 7 (iv) (c) nor under Schedule-II article (iii), but under the residuary article 1 Schedule 1 of the Act."

In the aforesaid judgment, it was also found that a suit for declaration by a son or by a member of coparcener under the Hindu Law, would be on different footings. In such a suit, the main relief is that of declaration and such suit can be valued by the plaintiff under Section 7 (iv) (c) of the Act. Under Section 7 (iv) (c) of the Act, prior to amendment in Haryana in 1974, it is for the plaintiff to state the amount he values the relief sought. Such valuation is contemplated to be not less than the value of the property, calculated in the manner provided under Clause (v) of the Section. Now Clause (v) contemplates that where the subject matter is the land other than the land situated within the municipal limits or Abadi deh, the Court fee payable is the value determined under Clause 7 (v) (a) of the Act and where the subject matter is the house, gardens or the land situated within the municipal limits or Abadi deh, then the Court fee payable is according to the market value assessed under Clause 7 (v) (b) of the Act. The relevant clauses of the Act, as applicable in Haryana, are produced as under:-

"**7. Computation of fees payable in certain suits:-** The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:-

(i) xx xx xx

(ii) xx xx xx

(iii) xx xx xx

(iv) in suits -

(a) xx xx xx

(b) xx xx xx

(c) for a declaratory decree and consequential relief:- to obtain a declaration decree or order, where consequential relief is prayed,

xx xx xx

xx xx xx

In all such suits, the plaintiff shall state the amount at which he values the relief sought.

Provided that minimum Court fee in each shall be [twenty five rupees.

Provided further that in suits coming under sub-clause (c), in cases where the relief sought is with reference to any property such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) for this section.

(v) **for possession of lands, houses and gardens** – In suits for the possession of land, houses and gardens, according to the value of the subject matter; and such value shall be deemed to be, -

a) where the subject matter is land other than land situated within municipal limits or Abadi Deh, whether under cultivation or not according to the market value thereof, which shall be deemed to be -

(i) in the case of land which is irrigated by perennial canal, sixty rupees per acre;

(ii) in the case of land which is irrigated by non-perennial canal or by well, fifty rupees per acre; and

(iii) in the case of land which is Barani, Sailab, Bud, Thur, Sem, Banjar or of like nature,

thirty rupees per acre; and

(b) where the subject matter is house, garden, or land situated within municipal limits or Abadi Deh whether under cultivation or not, according to its market value."

In fact, the judgments referred to by the respondents, namely 2002 (2) PLR-853, 2004 (3) P.L.R.-513, also hold to the same effect that the proper Court fee in such a suit is one under Section 7 (iv) (c) of the Court Fees Act, 1870. In Bagrawat's case, this Court has held that the Court fee in a suit for declaration challenging the legality of the sale deed in a case where the land is said to be ancestral coparcener property, the requisite Court fee is as per the sale consideration in the sale deed referred to in the suit. A reading of the judgment does not show that the provisions of Act No.22 of 1974 contemplating the Court fee in a suit for declaration where consequential relief is sought, has to be affixed in terms of Section 7 (v) of the Act. Therefore, the said judgment provides legal assistant to the learned counsel for the respondent. In Jagdish's case (supra), this Court has held that the sale deed under challenge in respet of a Joint Hindu Family Property and, therefore, the only way to avoid to seek its cancellation cannot have any effect on the document. It was held that Article 1 of Schedule 1 of the Court Fees Act is applicable. The distinction noticed by the Full Bench in Niranjan Kaur's case (supra), as escaped the attention of the Court as well as in view of the judgment of the Hon'ble Supreme Court in Shamsher Singh's case (supra), the proper Court fee in such a suit is the one contemplated under Section 7 (iv) (c) of the Act. Thus, it is conclueded that where challenge is to the sale of a Joint Hindu Family Property, such suit is the one for declaration with

consequential relief, of which the Court fee is payable as provided under Section 7 (iv) (c) of the Act.

It is also apparent that in a suit for declaration to challenge the sale deed on the allegation of fraud and misrepresentation where the consequential relief of possession is sought for, the valuation of the said suit has to be ad-valorem in terms of the Court fee payable under Article-1, Schedule-1 of the Act. But in a case where the challenge is to a sale effected by `Karta' of a Joint Hindu Family agricultural property, the same has to be quantified under Section 7 (v) (a) of the Act and in respect of the land within the municipal limits or Abadi deh, under Section 7 (v) (b) of the Act.

In the present case, the challenge is to the sale of 7 kanals 12 marlas of agricultural land vide sale deed dated 15.6.1997. The said land is not alleged to be within the municipal limits or Abadi deh and, therefore, the Court fee payable is under Section 7 (iv) (c) read with Section 7 (v) (a) of the Act. Therefore, I am of the opinion that the order passed by the learned trial Court suffers from patent illegality or irregularity. Thus, the order passed by the learned trial Court calling upon the plaintiff to affix the ad-valorem Court fee on the sales consideration mentioned in the sale deed, is not sustainable in law.

Consequently, the present revision petition is allowed. The order passed by the learned trial Court is set-aside with a direction to the learned trial Court to quantify the Court fee payable under Section 7 (v) (a) of the Act, which shall be made good, if so required, by the plaintiff in accordance with law.

(HEMANT GUPTA)

December 15, 2006 **JUDGE**

**mohinder*